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Review of the sugar code of conduct

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Summary

The Australian sugarcane industry is one of Australia's largest rural industries. Cane farms are located across Queensland from Mossman in the far north to Grafton in northern New South Wales, and are largely owned by sole proprietors and family partnerships. The industry is unique because cut sugar is highly perishable, so it must be sent nearby for milling—limiting competition. Growers and their local mills are dependent on each other to achieve high global sugar prices because of the long planting and harvesting cycle, the limited crushing season and long forward contracts that are entered into when selling sugar.

Until 2006 the industry was highly regulated. Reviews found it to be uncompetitive internationally, unable to handle volatile global sugar prices and not adaptive to innovation. In 2005 industry participants together agreed to move to a more commercial, non-legislative marketing structure and the Queensland Government agreed to introduce to parliament the legislative amendments necessary to support the structural changes. The subsequent deregulation in 2006 removed export restrictions and created a system where parties were able to freely negotiate contractual terms.

Since deregulation the industry has become globally competitive, and this was achieved without the level of government support seen in many other sugar-producing countries. Many growers and millers adjusted readily to the new environment and were able to engage in stable, productive and robust commercial negotiations. However, some experienced difficulties reaching mutually acceptable contract terms—leading to prolonged negotiating impasses. As a result, the Queensland Parliament amended the *Sugar Industry Act 1999* (Sugar Industry Act) and the Australian Parliament made the Competition and Consumer (Industry Code—Sugar) Regulations 2017, known as the sugar code of conduct. The code was created to give parties more certainty about options available to resolve the negotiating deadlock. The Regulations require a review of the code after 18 months to determine whether it had achieved their objectives and to consider its future.

In the course of conducting this review, there was evidence that the industry is working together to achieve mutually beneficial outcomes. For example, representatives from across the industry formed the Australian Sugar Industry Alliance (ASA). Industry representative bodies are also jointly preparing to host the July 2019 International Sugar Organization Conference.

Key findings of the review

Code provides a clear dispute resolution mechanism

In a deregulated environment, commercial terms of contracts should be reached through negotiation not regulation. However, in the Australian sugar industry a small proportion of parties do not yet appear to be at a point where this will occur without continued regulatory support.

The code provides clear avenues for dispute resolution, supporting productive industry contracting and negotiation.

Code should be refined to avoid unintended consequences

Miller feedback included the concern that clauses defining the terms of pre-contract arbitration could be interpreted to apply to products other than raw sugar. In the past, millers have used sugarcane by-products to create other products (such as molasses), offsetting operational costs and sustaining profitability.

The code should be clearer and more specific that it applies to raw sugar only. This would provide millers with confidence to invest in other innovative products and in the industry more generally.

Code should focus on dispute resolution

A major function of industry codes is to provide parties with certainty on avenues available to resolve disputes. They should help regulate the behaviour of parties in their dealings rather than specify the outcomes of dealings. Codes that provide flexibility so parties can arrive at agreements that best suit their circumstances are preferable to those that pre-empt negotiation outcomes and potentially leave both parties worse off.

The sugar code of conduct largely focuses on resolving disputes, but one clause may pre-empt negotiations. This clause specifies that millers cannot exercise the right to market all the sugar they produce as they see fit but rather provides growers with power to select the marketer a miller must use for a proportion of sugar produced. The provision is not well suited to a code of conduct because it reaches into commercial matters and determines an outcome that may not be in the best interests of either party or the industry.

There is evidence of commercial arrangements where millers and growers have agreed that marketing activities continue to remain the responsibility of the miller.

The Australian Government Productivity Commission (2016) and the Queensland Productivity Commission (2015) have separately concluded that these marketing restrictions impede profitability in the sector. The marketing provisions in the code duplicate the Sugar Industry Act, meaning that code provisions have no practical effect. The review recommends that the marketing restrictions provision be removed from the code and that the Queensland Government retain responsibility for marketing restriction issues.

Industry should continue to work together to achieve mutually beneficial outcomes

Sugar industry participants should continue to work together to ensure the industry remains profitable and viable into the future. Despite tensions in recent years, the work of the ASA and other industry players is encouraging. Going forward, industry should develop a strategy and gain support for it from all representative bodies.

Recommendations

1) The code should be retained to continue to provide certainty for growers and millers regarding their arbitration options while they conclude their adjustment to commercially negotiated cane supply contracts.
2) The code should be amended to make clear that pre-contractual arbitration applies to raw sugar only and not to any other products obtained from sugar cane. This will provide millers with regulatory certainty and facilitate investment in milling assets and development of innovative products.
3) The provision that allows growers to choose their marketer should be repealed from the code. It is inconsistent with the objectives and benefits of the recent evolution of the industry's regulatory arrangements, and duplicates obligations already contained in the *Sugar Industry Act 1999*.
4) The Code should be reviewed in two years to assess whether commercial relationships between the parties have matured and whether the code is still needed.
5) Australian sugar industry representative bodies should work collaboratively to develop a long-term strategy to address shared future challenges.
6) All industry parties should focus on the longer term and fundamental issues jeopardising the industry's future.

Introduction

Review context

The Competition and Consumer (Industry the Code—Sugar) Regulations 2017 established the sugar code of conduct, coming into effect on 5 April 2017.

The code regulates the conduct of growers, mill owners and marketers of grower economic interest (GEI) sugar in relation to contracts or agreements for the supply of cane or the on-supply of sugar. It has three main components:

1) Grower marketing choice for any sugar for which growers bear the price risk (grower economic interest sugar).
2) Mandatory pre-contract arbitration between mill owners and marketers (on-supply agreements).
3) Mandatory pre-contract arbitration between cane growers and mill owners (cane supply agreements).

Under the Regulations, a review of the operation of the code must have commenced within 18 months of its commencement—therefore by 5 October 2018.

Review approach

On 4 July 2018 the Hon. David Littleproud MP, Minister for Agriculture and Water Resources, together with the Hon. Michelle Landry MP, member for Capricornia, and Mr George Christensen MP, member for Dawson, announced the code would be reviewed to determine its effectiveness and the requirement or otherwise for amendments.

The Australian Government Department of Agriculture and Water Resources led the review. Its team also included officers from the Australian Government Treasury.

Agriculture established a Have Your Say page to provide stakeholders with information on the review and an opportunity to make written submissions (Department of Agriculture and Water Resources 2018).

The code was implemented without a regulation impact statement. Therefore, a review of the regulatory impact of the code should be available within two years of its commencement—April 2019 (Office of Best Practice Regulation 2016).

Review terms of reference

The review terms of reference were to inquire into:

1) The effect that Commonwealth Government intervention by prescribing the Code has had on Australia's raw sugar export industry and whether it continues to be appropriate for the purposes of
    a) regulating the conduct of growers, mill owners and marketers of sugar in relation to contracts or agreements for the supply of cane or the on-supply of sugar

b) ensuring that supply contracts between growers and mill owners have guaranteed the grower's choice of the marketing entity for the grower economic interest sugar manufactured from the cane the grower supplies

c) requiring or providing for pre-contractual arbitration of the terms of agreements for the supply of cane or the on-supply of sugar if the parties fail to agree to those terms.

2) The current and future impacts on competition of the Code in relation to Australia's raw sugar export market, including for the supply of cane and marketing services of grower economic interest sugar.

3) The regulatory impacts of the Code on businesses in the raw sugar export supply chain.

4) The extent to which the Code has delivered a net benefit for the Australian community.

5) Any other related matters.

The review will provide advice on whether the Code should:

a) remain in operation without amendment

b) remain in operation with amendment

or

c) be repealed.

Written submissions and consultations

The review team invited written submissions from the public and held public consultations and face-to-face meetings with key industry bodies. It received 60 written submissions. See Appendix C: Submissions received and Department of Agriculture and Water Resources (2018).

Public consultations were held in hubs in major sugarcane-growing areas (Table 1).

Table 1 Sugar code of conduct review, public consultations, 2018

Area	Date	Time	Location
Gordonvale, Queensland	Tuesday, 4 September 2018	9.30 am – 10.30 am	Gordonvale Community Hall, 17–19 Cannon Street, Gordonvale QLD 4865
Innisfail, Queensland	Tuesday, 4 September 2018	1.30 pm – 2.30 pm	Innisfail
Ingham, Queensland	Wednesday, 5 September 2018	9.30 am – 10.30 am	Ingham
Ayr, Queensland	Thursday, 6 September 2018	9.30 am – 10.30 am	Ayr
Mackay, Queensland	Thursday, 6 September 2018	3.30 pm – 4.30 pm	Jubilee Community Centre, Room 4, 73 Gordon Street, Mackay QLD 4740
Bundaberg, Queensland	Monday, 10 September 2018	3.30 pm – 4.30 pm	Bundaberg Civic Centre, Supper Room, 190 Bourbong Street, Bundaberg Central QLD 4670
Broadwater, New South Wales	Wednesday, 12 September 2018	9.30 am – 10.30 am	Riley's Hill Community Centre, Little Pitt Street, Broadwater NSW 2472

The review team met with the Australian Cane Farmers Association, Australian Competition and Consumer Commission, Australian Sugar Milling Council members and board, Burdekin District Cane Growers Organisation, CANEGROWERS members and board and Queensland Sugar Limited. It also held a teleconference with the Productivity Commission.

1 Australian sugar industry

1.1 Industry structure

The sugarcane industry is one of Australia's largest rural industries, and sugar cane is Queensland's largest agricultural crop. Farms and mills are primarily located along the eastern Australian coastline, from Mossman in far north Queensland to Grafton in northern New South Wales. Approximately 4,000 farms grow sugar cane on around 380,000 hectares. They supply 24 mills, owned by eight separate milling companies (Australian Sugar Milling Council 2018).

The vast majority of cane farms are owned by sole proprietors or family partnerships. The Australian sugar industry directly employs approximately 16,000 people across the growing, harvesting, milling and transport sectors (Australian Sugar Milling Council 2018).

Sugar mills are owned by publicly owned entities, privately held companies limited by guarantee and co-operatives. Between 2010 and 2012 ownership in Australia's sugar mills changed substantially, resulting in half the milling groups (representing 75 per cent of production) becoming foreign owned.

The industry's major product is raw crystal sugar, which is sold to domestic and overseas refineries. Queensland produces approximately 95 per cent of Australia's raw sugar, and northern New South Wales produces the balance.

In 2016 Australia produced 36.5 million tonnes of sugar cane and 4.77 million tonnes of sugar. The sugarcane crop can also produce 1 million tonnes of molasses and 10 million tonnes of bagasse annually. Bagasse is the fibrous matter that remains after sugar cane or sorghum stalks are crushed to extract their juice. It is used as a biofuel and in the manufacture of pulp and building materials.

Approximately 85 to 90 per cent of the raw sugar produced is exported, generating up to $2 billion in export earnings. This makes Australia the second-largest sugar exporter in the world. Over recent years, Asian exports have become a major focus. The Republic of Korea, Japan and Indonesia have become the most important destinations for Australian raw sugar. Production from New South Wales is predominately refined and sold on the domestic market.

1.2 Mutual dependence

Cane growers and sugar millers are mutually dependent. Harvested cane is perishable and needs to be processed as soon as possible after cutting (within 16 hours), limiting the choice of mills for individual growers to supply their cane. In Australia a limited number of companies own most of the mills—so, even when a grower has a choice of mill, most are owned by the same company.

The sugar industry operates at low margins, and mills operate with high fixed costs. Millers therefore depend on growers to maximise cane throughput to keep milling infrastructure economically viable. Milling representatives advised the review team that a 5 per cent reduction in cane crush volume results in a reduction of approximately 20 per cent in earnings before interest and tax.

Sugar mills are specialised infrastructure so cannot be used for alternative purposes. This means millers are less able than growers to pursue alternative market opportunities, further increasing their dependency on growers. Growers have to make substantial investments and make their investment decisions for growing seasons before millers do, but they have more flexibility to pursue alternative options in other crops or livestock.

1.3 Sugar price and cane payments

Grower and miller mutual dependence is also evident in the cane payment formula. The formula was created in 1916 and has survived with only marginal modification (Hildebrand 2002). The formula primarily links the price millers pay growers for cane to the price the resulting raw sugar is sold for and the amount of sugar in the cane. This gives growers an incentive to grow cane in a manner that increases sugar content. It also means growers have a stake in the sale price of raw sugar and has led to demands from growers for choice in marketing the portion of the millers' raw sugar that flows through to them in cane payments.

The raw sugar price has two main components—the global sugar price and premiums achieved through marketing. The review received conflicting information about the impact of sugar marketing on the final cane payment growers receive. However, the global sugar price has the biggest impact by a large margin. Growers and millers value sugar marketing premiums on cane payments. However, the impact of these premiums is marginal compared with the impact of the global sugar price.

Given the impact of the global sugar price on cane payments, growers need access to a range of sugar pricing options that provide flexibility to meet different business plans and risk appetites. Post deregulation, millers made pricing options available to allow growers (Submission 2, Australian Sugar Milling Council) to manage their price exposure independent of millers' price risk-management strategies. Many submissions indicated that the range of price management options available to growers increased markedly following implementation of grower choice in marketing. Marketing bodies owned by millers and Queensland Sugar Limited (QSL) began engaging more with growers about pricing strategies, leading to increased grower awareness of price risk-management strategies. QSL is a charity not-for-profit company limited by guarantee that is owned jointly by mill-owner members and grower members.

Marketing restrictions

Given the relatively marginal impact of marketing on cane payments, during consultation the review team asked stakeholders why they considered marketing restrictions and grower choice in marketing so important. Growers claim there are financial benefits—such as having control of the risk associated with marketing the share of the sugar growers have an economic interest in and gaining any potential benefits from arbitrage in trading.

1.4 Sugar industry deregulation

In the early 2000s successive reviews concluded that the regulatory system established under the Sugar Industry Act had constrained sugar industry productivity. These reviews also raised questions on whether the highly regulated nature of the Queensland industry was hindering industry development and its responsiveness to the international trading environment. They also found that the system increased tension between growers and mill operators and fostered

resistance to change—hindering productivity and diminishing innovation (State of Queensland 2004).

In 2005 the Queensland sugar industry—represented by the Australian Sugar Milling Council and CANEGROWERS—and the Queensland Government signed a memorandum of understanding in response to these reviews. They agreed that the sugar industry would move to a commercial, non-legislative marketing structure and the Queensland Government would introduce the necessary legislative amendments to support the structural changes (Queensland sugar industry and Queensland Government 2005). The Australian Government provided $334 million to assist the industry to stabilise and underpin it during the reform process. These funds helped consolidate the cane-growing sector and provided for those who chose to exit the industry.

On 1 January 2006 the Sugar Industry Act was amended to deregulate the sugar industry. The amendments:

- allowed parties to determine contractual terms, including price
- removed export restrictions.

Before deregulation, QSL had a single-desk monopoly to market all exported raw sugar. Deregulation allowed the emergence of multiple marketers of sugar, removing the single-desk arrangement that protected QSL's revenue.

Some changes to the longstanding marketing arrangement occurred immediately post deregulation, but others took more time. For example, in 2014 three millers announced their intention to not enter into new raw sugar supply agreements with QSL, opting to market the raw sugar themselves from 2017.

The *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* subsequently gave growers the right to require milling companies to direct grower economic interest (GEI) sugar to third-party marketers such as QSL and provided for pre-contract arbitration between growers and millers for cane supply agreements. The amendments also introduced on-supply agreements between millers and marketers but did not provide for their pre-contract arbitration.

Some grower groups expressed concern about proposals to stop using QSL as the marketer for exported raw GEI sugar. Grower concerns can broadly be summarised as:

- losing control of the risks associated with marketing GEI sugar
- loss of trading arbitrage benefits
- lack of trust in the transparency millers would provide.

See Appendix A: Sugar industry inquiries and reviews.

2 Sugar code of conduct

2.1 Code background

In 2017 Wilmar and QSL were still negotiating the terms of an on-supply agreement (OSA) to allow growers to market their grower economic interest (GEI) sugar with QSL. Many growers in the affected regions chose not to enter into a cane supply agreement (CSA) until they could choose their GEI sugar marketer. The OSA between Wilmar and QSL was not finalised until 22 May 2017. As a result, many of the 1,500 affected cane growers did not have a CSA until after this time, with the crush due to commence mid-year. Under the Sugar Industry Act growers cannot supply cane to a mill without a CSA, so growers could either:

- wait to finalise their CSA, potentially delaying their harvest and in turn payments for their cane

  or

- market with the miller-marketer and use the pricing options provided by them (and subsequently transfer marketer to QSL if they chose).

Growers in some districts chose not to enter into a CSA until the relevant OSA with QSL was in place. The world sugar price dropped from highs of US22.91c per pound in October 2016 to US13.53c per pound in June 2017 (Figure 1). When the growers eventually signed CSAs, they had missed out on the best prices.

Figure 1 Sugar, average world nominal price, 2014–2018 a

a Intercontinental Exchange, sugar no. 11.

Millers in those districts told the review team that the CSAs they offered gave growers the option to lock in the higher prices and transfer GEI marketing to QSL later—but that growers chose not to sign at all. Growers reported that they were given no information on timing or how the transfer would have worked in practice.

In some districts growers took advantage of the millers' offer and locked in the higher prices. In the districts where growers held out and were unable to take advantage of higher prices, it is clear that trust and respect between the grower representatives and millers was much lower. Grower representatives and millers in these cases appeared to take a 'winner takes all' approach.

In one district pre-contract arbitration ultimately failed—due to the arbitrator forming the view that the arbitration provision in the Sugar Industry Act was unconstitutional.

In April 2017 the Australian Parliament made the Competition and Consumer (Industry Code—Sugar) Regulations 2017, known as the sugar code of conduct, to give parties more certainty about options available to them to resolve the negotiating deadlock. The code reinforced the amendments to the Sugar Industry Act—allowing for grower choice in marketing, including pre-contract CSA arbitration. It also provided for pre-contract arbitration of OSAs and introduced a requirement for parties to act in good faith.

Shortly after the introduction of the code, all remaining OSAs and CSAs were finalised. Code provisions were not used during the negotiations. See Appendix B: Operation of the code for a description of code provisions.

2.2 Code impact

The code provisions have not yet been used. Despite this, industry has strong views on the impact of the code.

Grower perspectives

Many growers and representatives advised the review team that they considered the code an important safety net to protect their access to choice in marketing, particularly given that the Sugar Industry Act could be repealed. They emphasised the importance of the availability of pre-contract arbitration to break negotiation deadlocks, noting their reduced bargaining power due to availability of only one miller. Grower representatives noted the uncertainty surrounding arbitration under the Sugar Industry Act so that code provisions were potentially the only arbitration available. Grower representatives also highlighted the potential value of the code good faith provisions.

Grower representatives also described the grower choice in marketing created by the Sugar Industry Act and supported by the code as 'the final step in the deregulation of the industry' (Submission 15, Synergies Report)—because it enabled further competition in a part of the supply chain. Miller representatives took the opposite point of view.

Miller perspectives

Millers advised the review team that the code has added uncertainty, complexity and cost to sugar industry operations, deterring investment and undermining competitiveness. They said that investments not committed to before the code was established have been postponed or cancelled. They were particularly concerned about pre-contract arbitration because they believe it runs counter to the objective of sugar industry deregulation (Submission 2, Australian Sugar Milling Council). Millers emphasised their uncertainty about pre-contract arbitration being used to extend code provisions to cover by-products of sugar production (such as molasses or energy generated by bagasse).

2.3 Code evaluation

The code contains provisions that restrict millers' ability to market sugar produced from cane purchased and give growers this right. This means that growers may elect a third-party marketer other than the miller to market their economic interest sugar, requiring millers to enter into OSAs.

These marketing restrictions relate to issues that are unique and confined to Queensland. The code marketing restriction provisions mirror those in the Sugar Industry Act. However, they have no effect in Queensland because supply contracts (including in relation to marketing restrictions) are already regulated by the Sugar Industry Act.

When the sugar code of conduct was first introduced, marketing restrictions had been a key contention between the parties—so code provisions were designed to help resolve a prolonged negotiating impasse. It may not remain appropriate that a Commonwealth code of conduct intended to regulate commercial behaviour across Australia contain provisions that determine commercial outcomes relevant to one state only.

The role of the Australian Competition and Consumer Commission

The role of the Australian Competition and Consumer Commission (ACCC) under the code is to ensure that the parties act in good faith during their dealings with each other. This limited ACCC role was intended to reflect the minimalist nature of the code, as it was primarily designed to provide pre-contractual arbitration as a safety net for the industry in situations where the parties are unable to reach agreement on commercial terms.

In its submission, the ACCC recommended that the code grower choice provisions be activated to allow it to take enforcement action and introduce civil pecuniary penalties for breaches of the code (Submission 1, Australian Competition and Consumer Commission). However, marketing restrictions are already regulated by the Sugar Industry Act, which provides remedies and legal recourse for growers that are not afforded choice of marketer in accordance with that law.

Similarly, there is little evidence to support the introduction of pecuniary penalty provisions. While there are other industry codes currently operating in Australia which include ACCC penalty provisions, these have been added after reviews of the relevant code concluded there to be evidence of persistent non-compliance by industry participants. In contrast, the review did not receive any compelling evidence of this nature in the sugar industry, nor did the review receive any other submissions calling for additional powers for the ACCC. Stakeholder attendees at the public consultations did not raise the limited role of the ACCC or lack of penalty provisions as being a concern.

The provisions of the code currently provide for pre-contract arbitration, which is capable of resolving issues relating to whether grower choice has been provided, without the need for further ACCC involvement. The review has considered the merits of these proposals and has determined that they are not suitable for the code, particularly as the industry continues its path towards deregulation and strengthening commercial relationships.

The situation should be monitored and if necessary, further ACCC involvement could be considered.

Productivity Commission findings

The Productivity Commission and others have raised significant concerns about marketing restrictions. The Productivity Commission (2016) inquiry into the regulation of the Australian agricultural sector examined the marketing restrictions contained in the Sugar Industry Act and found:

> There is no market failure (or other reasonable objective) to justify the re-regulation. The evidence also suggests that the growers' preferred choice of marketing arrangements is likely to reduce the productivity and profitability of the industry (by constraining investment and structural adjustment).

The Productivity Commission also referred to Queensland Productivity Commission findings that the benefits of additional regulation did not outweigh the costs of the original Bill, which contained marketing restrictions.

The Queensland Productivity Commission (2015) found that the Bill:

> … interferes with property rights of millers … This is likely to reduce the profitability of future sugar mill investment and dampen longer term innovation and productivity compared to no additional regulation.

Conclusion

On balance, the review found little benefit in retaining duplicative and non-operative provisions in the code. The inclusion of these provisions may hinder the ability of the Sugar Industry Act to be changed to meet the needs of the Queensland sugar industry. It may also risk creating inconsistencies between Australian and state sugar industry law and future policy.

The Queensland-specific grower choice provisions should be removed from code. The code could then provide a robust national framework for dispute resolution across the industry—a common feature of other prescribed industry codes. This change would not affect growers' choice of marketer rights because this would continue to be provided for under the Sugar Industry Act.

2.4 Potential conflicts with Part IV of the Competition and Consumer Act 2010

The code has an exemption from the Part IV anti-competitive conduct provisions of the *Competition and Consumer Act 2010* (CCA), which authorises the 'doing of things' under the code. However, the CCA only allows this exemption to last for two years, after which time it sunsets. There was a concern that the code may be found to be inconsistent with Part IV of the CCA after the exemption sunsets. For example, agreements under the code may involve a cartel provision. This could be in conflict with sections 45 and 47 of the CCA, which deal with conduct that has the purpose or effect (or is likely to have the effect) of substantially lessening competition.

On 5 May 2017 the ACCC authorised growers to collectively bargain with millers for 10 years. The authorisation applies only to growers represented by CANEGROWERS.

The ACCC is also seeking submissions on a potential collective bargaining and franchising class exemption. The exemption would provide eligible businesses and franchisees with legal protection to collectively bargain with customers or suppliers without having to apply to the

ACCC. Collective bargaining by cane growers with mills could be covered by this potential class exemption.

The risk of inconsistency between the code and Part IV of the CCA is deemed low.

3 Long-term strategy

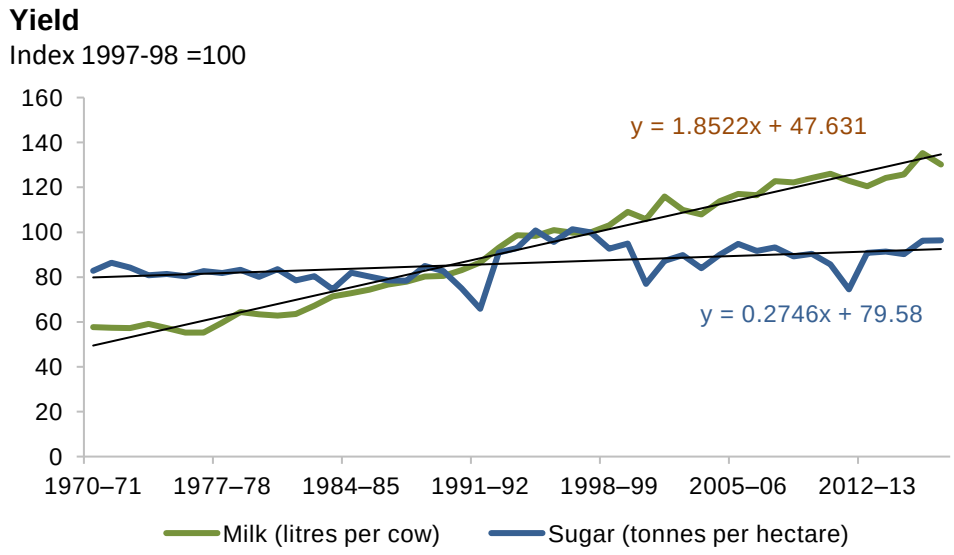
Since deregulation in 2006 the Australian sugar industry has become globally competitive. It achieved this without the level of government support seen in many other sugar-producing countries. However, global competitiveness is not static and the industry will face future challenges—not least of these being low global sugar prices resulting from oversupply.

The world indicator price for raw sugar (Intercontinental Exchange, nearby futures, no. 11 contract) is forecast to fall by 15 per cent to average US11c per pound in 2018–19 (October to September). If realised, the world sugar indicator price would be the lowest since 2003–04, when the price was around US9c per pound (in 2017–18 dollars). Support policies in countries such as India, Thailand and the United States are expected to continue to keep local sugar prices well above the world price, providing an incentive for higher production. In 2018–19 carry-over stocks are expected to reach record levels and production is expected to be higher than consumption (ABARES 2018). If realised, world sugar supplies would exceed record levels.

Many cane farms are unprofitable. The most recent ABARES survey for 2013–14 showed that only 11 per cent of sugarcane farming businesses (those planting more than 250 hectares of cane) were profitable (ABARES 2015). Anecdotal information collected during the survey suggested that farmers are subsidising small sugarcane businesses with income from other sources.

Productivity also appears to be stagnant (Figure 2). Sugar yields per hectare have increased by less than 0.3 per cent per year since 1970–71 compared with nearly 1.9 per cent per year for milk yields per cow. The dairy and sugar industries have similar monopsony and deregulation characteristics.

Figure 2 Australian sugarcane and dairy farm productivity, 1970–71 to 2012–13



Source: ABARES 2017a and 2017b

The industry faces continuing pressures on production costs, particularly for labour, electricity and water. Sugarcane production costs are currently around $37 per tonne. Prices for regulated

irrigation water and electricity are rising rapidly. This will potentially threaten the viability of irrigated sugar cane into the future. The Australian sugar industry is mechanised and performs well technically. However, rural labour costs have increased considerably due to strong competition for skilled labour from the resources industry.

Increased electricity prices affect irrigated sugarcane farms. According to CANEGROWERS (2018a), electricity prices are threatening the financial and environmental sustainability of irrigated agriculture in Queensland. Irrigation is critical to the sugarcane industry. Around 3,500 Queensland sugarcane farms are irrigated, representing around 55 per cent of total growers and 60 per cent of production. The main irrigation areas are the Atherton Tablelands, Burdekin, Proserpine, Mackay, Bundaberg, Isis and Maryborough. Most growers in these areas irrigate and production would be much lower otherwise (CANEGROWERS 2018b).

Grower and miller interests in the industry's future are most aligned on its social licence, including on the environment and health. Whole-of-industry effort will lead to best outcomes.

The Great Barrier Reef is threatened due to the combined effects of mass coral bleaching, pollution, storm damage and outbreaks of pests like crown-of-thorns starfish. Sugar cane is the major agricultural crop grown within reef catchments, and nutrient run-off from cane farms is a major contributor to pollution (Queensland Government 2017). The industry has started to address these issues. However, it will take time and joint commitment to change farming practices developed over a century.

Health and nutrition issues related to obesity levels and sugar consumption are commonly raised in the community. Dietary guidelines advise the Australian population to reduce added sugar intake. A sugar tax has been identified by some as a part of a solution.

The industry must focus on driving innovation. For example, the Queensland University of Technology (2018) outlined how the biofuels industry could create thousands of jobs and $1 billion per year. It also argued that there needs to be progress from biofuels to bioproducts. Demand for biofuels would start to decline from around 2030 as people move to charging cars off home solar panels instead of using petrol or biofuels. It expects ethanol to retain importance as a base for production of other bioproducts. Committing cane to these other uses would result in a dramatic reduction in total supply for sugar production, potentially leaving sugar mills as stranded assets. The industry must plan to build a viable and diversified future.

Appendix A: Sugar industry inquiries and reviews

Table A1 Sugar industry inquiries and reviews, 1983 to 2017

Year	Review	Key points
1983	Industry Assistance Commission—inquiry into whether short-term assistance should be provided	Found that: • all industries should absorb some fluctuations in their competitive positions without government assistance • no assistance was warranted where short-term fluctuations in revenue were unlikely to cause a great outflow of resources, which would occur in an industry where re-entry is uncontrolled • no short term assistance was justified over that available under general provisions of the Rural Adjustment Scheme.
1983	Industry Assistance Commission	• Industry and Advisory Committee (1983) inquiry recommended termination of the sugar agreement.
1986	Bureau of Agricultural Economics	Found that: • regulatory regimes inhibited efficiencies in the off-farm sector and substantial cost savings could be made in transporting and milling cane • expanding the productive capacity of the industry could be profitable, at least in the off-farm sector of the sugar industry (Borrell & Wong 1986).
1989	Senate Committee report on assistance for the sugar industry	Recommended that the Australian Government: • proceed with removal of the embargo on sugar product imports • repeal the *Sugar Agreement Act 1979* • impose a specific tariff (Parliament of Australia).
1989	*Primary Industries and Energy Legislation Amendment Act (No. 3) 1989* (Cth)	• Replaced the *Sugar Agreement Act 1979* from 1 July 1989. • Existing refiners ceased to be 'tolled' refiners and became commercial operators in a deregulated domestic market. • Removed the embargo allowing refiners and others to import raw or refined sugar at import parity prices. • CSR ceased to be raw sugar marketer but was appointed as the sole Queensland sugar export marketing agent by the Sugar Board. • The NSW sugar industry withdrew from voluntary pooling arrangements with Queensland to market its own sugar. Harwood Refinery was built in northern New South Wales—to meet over 25% of domestic refined sugar requirements.
1991	Industry Commission inquiry report on statutory marketing arrangements for primary products	• Found that greatest efficiency gains would come from modifying or terminating statutory marketing arrangements where domestic price effects are greatest and those that control marketing outlets, prices or production (Industry Commission 1991).
1992	Industry Commission inquiry report on the Australian sugar industry	• The industry competes successfully on world markets but has one of the most restrictive regulatory regimes of any Australian industry. This is impeding its growth and performance. • Staged removal of all production and marketing controls specifically targeted at the sugar industry would benefit the industry and the Queensland and Australian economies. • Millers, and some growers, should choose how they market their sugar and how they handle their exposure to marketing risks.

Year	Review	Key points
		• Reform of these regulatory controls is the major focus of this report (Industry Commission 1992).
1996	Sugar Industry Review Working Party (SIRWP) report *Winning globally*	• Found that the industry and wider community would benefit from remaining regulated, though at a lower level than under the sugar industry legislation (SIRWP report 1996).
1998	Parliamentary Sugar Industry Task Force	• Recommended continued maintenance of Queensland single desk marketing arrangements.
1999	Moves toward deregulation	• Queensland Parliament repealed the *Regulation of Sugarcane Prices Act 1915* and the *Sugar Acquisition Act 1915*, replacing them with the *Sugar Industry Act 1999*.
2000	*Sugar Industry Act 1999*	• Effective 1 January 2000. • Cane production areas established, linking cane growers to local mills (State of Queensland 2004). • Required growers and mill owners to negotiate income distribution (State of Queensland 1999). • Allowed for collective and individual negotiations. However, a grower could not agree to an individual contract if the contract would adversely affect other growers (Hildebrand 2002). • Prescribed matters to be included in contracts. • Linked price of cane to price of raw sugar. However, contract negotiations could determine a different approach. • Dispute resolution mechanisms established. • QSL continued as single desk marketer for Queensland raw sugar exports (Ryan 2014).
2000	National Competition Council information paper	Found that: • failure to maximize efficiency and flexibility in each part of the supply chain limited Australia's competitiveness and prosperity • short-term concerns that delay or prevent necessary restructure, investment and efficiency gains would be short-sighted (National Competition Council 2000).
2000	Productivity Commission review of single desk selling	• Provided a framework for analysing potential benefits and costs of single-desk (or monopoly) marketing arrangements in Australian agricultural industries. • Suggested that conditions necessary for benefits of single desks to outweigh the costs are unlikely to be met in practice. This is because Australia is unlikely to have the ability to affect prices in world markets significantly and many claimed benefits of single-desk arrangements can be achieved without a regulated monopoly over all exports. • Found that single-desk arrangements inevitably discourage product and marketing innovations. Therefore, costs may be especially large in markets where product variety and value-adding are essential for success (Gropp, Hallam & Manion, V 2000).
2002	Hildebrand report (2002)	• Successive reviews concluded that the regulatory system established under the *Sugar Industry Act 1999* stifled industry productivity. • Questioned whether the highly regulated nature of the Queensland industry was hindering industry development and responsiveness to the dynamics and complexity of the international trading environment. • Found that the system created antagonism between growers and mill operators and fostered a resistance to change, which hindered productivity and diminished innovation (State of Queensland 2004).
2003	Williams (2003)	
2005	Centre for International Economics (2005)	
2005	Memorandum of understanding (Queensland sugar industry and	• Memorandum of understanding signed.

Year	Review	Key points
	Queensland Government 2005)	• Noted that all parties recognise that 'the future cannot simply be an extension of the past and that previous assumptions driving production and structural arrangements need to be changed. • Industry agreed to move to commercial, non-legislative marketing structure and Queensland Government agreed to introduce necessary legislative amendments to support the structural changes.
2005	Sugar Industry Reform Program	• Australian Government provided $334 million to assist industry to stabilise and underpin it during the reform process. Funds helped consolidate cane-growing sector and those exiting industry.
2006	Industry deregulation	• *Sugar Industry Act 1999* amended to deregulate the sugar industry: – parties were made free to determine contractual terms including price – export restrictions were removed.
2015	*Sugar Industry (Real Choice in Marketing) Amendment Act 2015* (Qld)	• Ensures grower choice in nominating the marketing entity for on-supply sugar in which they have an economic interest • Facilitates fair and final resolution of commercial disputes between growers and mill owners. • Came into effect 17 December 2017.
2015	QLD Productivity Commission (2015)	• Regulation impact statement on Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 finalised in November 2015. Found: • no evidence to support a case of market failure in the Queensland sugar industry to indicate need for additional government intervention • benefits of regulation proposed by the Bill do not outweigh costs • retaining the existing regulatory framework with no additional regulation would provide greatest net benefit to Queensland.
2015	Sugar Marketing Code of Conduct Taskforce	• Found that a mandatory sugar industry code of conduct would give growers market protection and choice in marketing.
2015	Senate Rural and Regional Affairs and Transport References Committee (2015)	• Recommended the development and implementation of a mandatory sugar industry code of conduct. Acknowledged that provided appropriate stakeholder consultation is undertaken, the work of the Sugar Marketing Code of Conduct Taskforce may provide a foundation upon which a code of conduct may be established.
2016	Productivity Commission (2016)	• Found no market failure or other reasonable objective to justify the re-regulation of the Queensland sugar industry • Recommended repeal of the 2015 amendments. • Found that QSL's charity status reduces transparency of its financial performance and is likely to further impede structural adjustment.

Appendix B: Operation of the code

The code regulates the conduct of growers, mill owners and marketers (of grower economic interest sugar) in relation to contracts or agreements for the supply of cane or the on-supply of sugar, including establishing a process for pre-contractual arbitration where the parties fail to agree to terms of contracts or agreements.

Part 2—Obligation to act in good faith

Cane growers, mill owners and marketers must act in good faith in all their dealings with each other, including when undertaking arbitration under the code.

Part 3—Supply contracts

Cane growers and mill owners must have a supply contract with the minimum terms about the sale of on-supply sugar provided for in the supply contract and the dispute resolution process. These provisions only apply if there is no other Australian law that specifically relates to supply contracts and that would apply to a supply contract between the grower and the mill owner for the supply of that cane.

Part 3 also provides for arbitration of disputed terms of supply contracts.

Part 4—Arbitration of terms of intended on-supply agreements

Part 4 sets out the application of the code to disputes between marketers and mill owners negotiating an on-supply agreement and the process for arbitration for the terms of an on-supply agreement.

Appendix C: Submissions received

The review report drew on information and views provided in stakeholder submissions and public consultations on the Sugar code of conduct review (Department of Agriculture and Water Resources 2018b). These stakeholders made written submissions:

1) Australian Competition and Consumer Commission
2) Australian Sugar Milling Council
3) Burdekin District Cane Growers
4) CANEGROWERS Bundaberg
5) CANEGROWERS Burdekin
6) CANEGROWERS Herbert River
7) CANEGROWERS Innisfail
8) CANEGROWERS ISIS
9) CANEGROWERS Mackay
10) CANEGROWERS Tully
11) CANEGROWERS/Australian Cane Farmers Association
12) National Farmers Federation
13) Queensland Farmers Federation
14) Queensland Sugar Limited
15) Queensland Sugar Limited/CANEGROWERS/ Australian Cane Farmers Association/Burdekin District Cane Growers—'Review of the Sugar Code of Conduct' (Synergies Report)
16) Tully Sugar Limited
17) Anthony and Emily Vasta
18) Bradley Hanson
19) Callum Boland
20) Clive Williams
21) Cr. Lyn McLaughlin
22) Dale Last MP
23) Ferdinand Francis John Pavetto
24) Fleur Vigerzi
25) Francis and Sherell Lando
26) Gary and Pam Elton
27) Geoffrey Tait

28) Gloria Paul
29) Greg Rossato
30) Joseph Quagliata
31) Kent Fowler
32) Kevin Borg
33) Lawrence Brotto
34) Lorenzo Rigano
35) Louise Dall'Osto
36) Mark Rossato
37) Michael Boland
38) Michael Zabala
39) Neil Johnson
40) Nicholas Dametto
41) Owen Menkens
42) Phil Loizou
43) Phil Whitby
44) Ricardo Pellizzari
45) Rita Quagliata
46) Robert Blines
47) Rod Watt
48) Ronald Berryman
49) Sarah Menkens
50) Shaun Betteridge
51) Sibby Previtera
52) Stephen and Mary Fry
53) Stephen Falco
54) Stephen Mckeering
55) Stephen Poli
56) Tanya Baillie
57) Thomas Callow
58) Warren Caspanello
59) William Lucas

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